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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

H5



Date:

**JUN 08 2011**

Office: PORTLAND, OR

FILE:



IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Portland, Oregon. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The field office director found that the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and that the applicant does not meet the exception to this ground of inadmissibility. The field office director also found that the applicant failed to establish extreme hardship to her spouse and denied the waiver application accordingly. *Decision of the Field Office Director*, dated February 24, 2009.

On appeal, counsel contends, *inter alia*, that the field office director failed to give proper weight to the applicant's spouse's medical conditions and other favorable factors.

After a careful review of the record, the AAO finds that the applicant is ineligible for a waiver. Section 212(a)(9) of the Act states in pertinent part:

....

(C) Aliens unlawfully present after previous immigration violations. -

(i) In general. - Any alien who -

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

(ii) Exception. - Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

(iii) Waiver. - The Secretary of Homeland Security may waive the application of clause (i) in the case of an alien who is a VAWA self-petitioner if there is a connection between--

(I) the alien's battering or subjection to extreme cruelty; and

(II) the alien's removal, departure from the United States, reentry or reentries into the United States; or attempted reentry into the United States.

An alien who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Gonzales v. Dep't of Homeland Security*, 508 F.3d 1227, 1242 (9th Cir. 2007). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago, the applicant has remained outside the United States, and the United States Citizenship and Immigration Services (USCIS) has consented to the applicant's reapplying for admission.

In this case, the record shows, and the applicant concedes, that on April 10, 2000, she attempted to enter the United States using another person's Border Crossing Card. *Declaration of [REDACTED]* dated July 24, 2006 (stating she tried to enter the United States with another person's green card); *see also Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated April 10, 2000. The record shows the applicant was ordered removed and was, in fact, removed from the United States the same day. *Verification of Removal (Form I-296)*, dated April 10, 2000; *Order of Removal Under Section 236(b)(1) of the Act*, dated April 10, 2000. The record further shows, and the applicant concedes, that she entered the United States without inspection the next day. *Declaration of [REDACTED] supra*.

The applicant was ordered removed under section 235(b)(1) and subsequently reentered the United States without admission. Therefore, the applicant is inadmissible under section 212(a)(9)(C)(i)(I) of the Act. The applicant's last departure from the United States occurred in April 2000. She reentered the United States the next day and is currently residing in the United States. Therefore, she has not remained outside the United States for ten years since her last departure. Accordingly, she is currently statutorily ineligible to apply for permission to reapply for admission and her application for permission to reapply for admission (Form I-212) has been denied. As such, no purpose would be served in adjudicating her waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), and the appeal must be dismissed as moot.

**ORDER:** The appeal is dismissed.